

**365.360 Evidence admissible in determining cost to wholesaler and retailer --
Cost survey.**

- (1) In determining cost to the wholesaler and cost to the retailer, the court shall receive and consider as bearing on the bona fides of the cost, evidence tending to show that any person complained against under any of the provisions of KRS 365.260 to 365.380 purchased the cigarettes involved in the complaint, at a fictitious price, or upon the terms, or in a manner, or under such invoices, as to conceal the true cost, discounts or terms of the purchase, and shall also receive and consider as bearing on the bona fides of the cost, evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.
- (2) If a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of KRS 365.260 to 365.380 is committed or charged to determine and establish on the basis of actual existing conditions the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under KRS 365.260 to 365.380 as tending to prove actual cost to the wholesaler or actual cost to the retailer complained against. Any party against whom any cost survey may be introduced in evidence shall have the right to offer evidence tending to prove any inaccuracy of the cost survey or any facts which may impair its probative value.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 280, sec. 10, effective July 13, 1990. --
Created 1956 Ky. Acts ch. 243, sec. 9, effective May 18, 1956.